

IMPROVING PRETRIAL JUSTICE IN NEW JERSEY



Significant legislative and constitutional improvements to New Jersey's pretrial justice system passed in 2014 and went into effect on January 1, 2017.

The Pretrial Justice Institute sat down with **Roseanne Scotti, New Jersey State Director** of the **Drug Policy Alliance** and one of the leaders in the effort to improve the state's pretrial system, to talk about how it came about.



Roseanne
Scotti

Following is a lightly edited transcript of our conversation, which touched on the importance of building a strong coalition, clear and convincing research, enlisting stakeholder support, and being prepared to meet opposition head on. We also discussed lessons for other states considering similar improvements.

YOU ARE THE DRUG POLICY ALLIANCE. WHATEVER LED YOU TO TAKE ON PRETRIAL IMPROVEMENTS IN NEW JERSEY?

We had seen some data from the AOC [Administrative Office of the Courts] in 2012 that showed there were a lot of people who seemed to be sitting in jail for long periods of time for relatively minor offenses and it wasn't clear why they were there. They didn't have a detainer; they weren't waiting for a bed to open up in drug court, anything like that. We were already a grantee of the Public Welfare Foundation, and they asked if we would be interested in adding pretrial justice to our efforts. That's how it started.

**We are
the Drug
Policy
Alliance.**

We began drafting a plan and even bill language right away because it was, without a doubt, the most complex legislation we've ever worked on. It was really system-wide change, not just looking at one particular law or statute. We decided on four changes to advocate for: moving away from money bail, creating a statewide pretrial infrastructure, focusing on non-financial forms of release, and enabling preventive detention for people who are truly a threat to the community.

Our goals and plan stayed constant throughout: to build a coalition of support to get legislation passed that addressed the four areas of change we were focused on. We had to shift tactics a few times to deal with some curveballs, but the goals stayed the same.

YOU FORMED A STRONG, BROAD-BASED COALITION TO SUPPORT THE WORK. TELL US ABOUT THAT.

We began first to build a campaign around the bail work and very early on we got some of the larger, more well-known groups like NAACP [National Association for the Advancement of Colored People], Latino Action Network, and the ACLU [American Civil Liberties Union] to sign on. We've worked in New Jersey for many years with a lot of people on other criminal justice issues so we had a head start in that area.

Having a big coalition was useful, because it gave us a really deep bench. So in committee hearings, even if all our supporters didn't testify, just showing up meant that they cared about that issue. That matters to legislators.

We spent a lot of time on the faith community. That was a very, very big piece of our coalition because we framed this very much as a moral issue. We had dozens of churches and individual ministers sign on and so they were a strong part of our coalition.

New Jersey is different in that there isn't a culture of everybody coming to Trenton, or people in a large city like New York City or Los Angeles where you have a lot of activist groups. So it meant a lot of driving all over the state and going to individual churches. We had to go out of our way to present to them and do everything we could to make it easier for them to participate. That's really one of our mantras; our role is to facilitate people being able to make their voices heard.

At one point somebody pointed out what an unusual coalition it was, what strange bedfellows, when you had the governor's office, the attorney general's office, the Drug Policy Alliance, and the ACLU all on the same side. And I think that also moved a lot of people, because it's pretty rare when we all line up on the same side of an issue.

YOU HAD STRONG SUPPORT FROM EACH OF THE THREE BRANCHES OF STATE GOVERNMENT, INCLUDING REPUBLICAN GOVERNOR, CHRIS CHRISTIE. HOW DID THAT HAPPEN?

The governor was already interested in pretrial, although more for preventive detention. He had tried to pass a constitutional amendment resolution in the legislature but that had failed to get enough votes to pass—largely because a lot of urban legislators were concerned that it would just be another mechanism by which poor people of color would be incarcerated. That was our concern as well. But at least there was some discussion going on about addressing bail.

“For me, every day that someone is deprived of their liberty in a jail, simply because they lack the economic means, is a crisis.”

New Jersey
Governor,
Chris Christie



Right after we issued a research report in 2013, Chief Justice Stuart Rabner, spoke about it at the annual New Jersey Bar Association convention. He said he wanted to convene a commission to investigate the pretrial issue. So we successfully highlighted that the problem existed, which is the first step. Rabner put together a stakeholder coalition that involved the AOC, the attorney general's office, the public defender, and prosecutors.

Other legislators who got on board early were state senator—now congressman—Donald Norcross, who was at all the meetings trying to bring all the sides together, and senate president Steve Sweeney, who just kept at it and kept at it.

YOU FOCUSED A LOT ON STRATEGIC COMMUNICATIONS AND THE MEDIA. HOW DID YOU CRAFT AND SHARE YOUR MESSAGING AND WHAT WAS THE BALANCE OF PUBLIC SAFETY VS. FAIRNESS?

We always go into a campaign with a clear message because the worst thing you can do is get out there with a bad message, and then it sits in people's minds early on and you have to overcome your own bad messaging. So we thought about it early, and we tweaked it along the way.

Pretrial justice has been one of the hardest issues we've had to message about. It's a very in-the-weeds issue. It took a lot of explaining, simply because people weren't familiar with it, just like we hadn't been familiar with it initially. When we started out, people had not thought about the issue and most folks did not know that people were being held just because they lacked resources.

So we narrowed down the key things that we wanted to talk about publicly while being able to talk with legislators and key stakeholders about the more complicated reforms. We put fact sheets together and, as our research report came together, we saw we really needed to focus on the fact that three-quarters of the people in our jails were there pretrial—not serving a sentence. This came as a shock to many people, including judges and systems people. It was also important to highlight that 40% of them were there solely because they lacked nominal amounts of money bail, and the average length of jail time was 10 months, which was much longer than anyone thought.

The whole time it was a two-pronged issue: justice and public safety. We focused more on the justice aspect than on the preventive detention aspect, but it was always a key part of the conversation. I think it was necessary because

the only way to have holistic pretrial justice is with some form of preventive detention—and I say that as a progressive and somebody who's spent a couple of decades trying to get people out of jails and prisons.

To us, it was, "If we're going to have preventive detention, let's make it honest and transparent. Let's have the prosecutor make a case for it. Let's have a risk assessment. Let's have a judge use discretion." We knew from the District of Columbia's example, that when you do that, a small percentage of people will be detained, but they will be the right ones, not just those who can't afford bail.

The governor made a public statement, and he used some examples of people who had gotten out on money bail—like the 2% bails they give people—and committed some violent offenses. We were less comfortable using those examples, but that was fine because he and the prosecutors and the attorney general's office used them. We focused on our messages about social justice and the inherently discriminatory nature of money bail. But we were all talking about holistic reform, because the governor also frequently talked about debtors' prisons and keeping poor people in jail.

HOW IMPORTANT WAS HAVING NEW JERSEY-SPECIFIC RESEARCH AND DATA?

The research that I've mentioned—conducted in New Jersey by Dr. Marie Van Nostrand of Luminosity, Inc.—was critical to all of this.

We released the final report the day of a pretrial justice seminar at Rutgers Newark where Dr. Van Nostrand and Judge Truman Morrison from Washington, DC. were presenting and we invited the press. We were like, "This is going to be a big deal." So that was a good way to launch it. I was there with hard copies and it got good coverage.

As I mentioned, Chief Justice Rabner referenced it at the New Jersey Bar Association conference, and it's the gift that keeps on giving. To this day people often quote our statistics, even without citing the report. They've just become ingrained in the conversation.

Having national data and research was important, but being able to use local statistics about what was happening to our residents in our local jails was important in getting people to care.

HOW IMPORTANT WAS IT TO GAIN PUBLIC SUPPORT? HOW DID YOU BUILD IT?

It's great to have statistics from research, but the next step is to show elected officials that

“There is a consensus that the bail system is irreparably damaged and needs to be transformed into a system that focuses on risk instead of the defendant’s resources”

**Alexander Shalom,
Senior Staff Attorney,
American Civil Liberties
Union of New Jersey.**

their constituents care about those statistics. So we had to focus on building public support.

We did a lot of public events and a lot of presentations to all sorts of groups, ranging from the Democratic Club in Princeton to Black churches in Newark and individual congregations and community groups. We listened to people.

It's great if you have the money to do polling and that kind of thing, but we did not.

We also looked at responses to things like letters to the editor, op-eds, editorials, and comments online to see where people are coming from. So, if you see people are saying, “Ugh, this is just going to be something else where people get out of jail and commit another crime,” that’s

where you might want to tweak your messaging and goals and focus on some public education about how holding people pretrial actually increases recidivism.

We had a little money to do some radio ads on one of the big stations here in New Jersey and we did some postcards and handouts that we got a lot of different community allies to distribute, and we were hearing good things.

LET’S TALK ABOUT THE BIGGEST OPPONENTS TO PRETRIAL IMPROVEMENTS. WHO WERE THEY AND HOW DID YOU HANDLE THEM?

The bail industry was active in New Jersey way before we ever got involved. They were aware very early on about what we were doing and they have the ability to be in a lot of legislators’ offices and they have a lot of money. They hired three lobbying firms. They were relentless, because there was a lot of money at stake for them. We were ready for them because we were well prepared, but I have never seen opposition like this in any other issue I’ve worked on, and I’ve worked on a lot of campaigns.

For example, we had heard that an early version of a bail bill—it wasn’t our version but it purported to do some reform—actually was going to include increases to the money bond schedule. So for certain offenses that were then \$25,000 in the schedule, they wanted it increased to \$50,000 because it puts more money in their pockets. As our work started to take off and things began to solidify with our [legislative] sponsor and the governor’s office and having stakeholders involved, the bonding industry really ramped things up.

They did seem to have the upper hand at different times and there were some really crucial moments when it looked like our efforts were going to crash and burn. When we saw changes

to bills we'd introduced that obviously had the industry's fingerprints on them, we pulled the coalition together and said, "All these folks are going to oppose this bill—we do not support this bill." There were lots of meetings with key legislators and others, particularly by members of the coalition like the NAACP, the Latino Action Network, and the ACLU, trying to get back to what our original bill was.

It was very helpful to have the support of systems people, like the chief justice, who spoke out consistently in favor of improving pretrial practices. And Judge Glenn Grant, the executive director for the AOC, was at several of our meetings explaining to legislators why the bill was bad and would make things worse. Also Senate President Steve Sweeney got very involved at this point, putting a lot of behind-the-scenes and in-public energy behind getting things back on track.

We had some very tense meetings where it was my job to tell the powers that be that, "No, this coalition will never support this [bad bill]." In the end, they didn't want to pass a bill that the NAACP and Latino Action Network and this whole group of faith leaders and churches had said, "No, we condemn this."

The bail industry also uses a couple of flawed studies to say that money bail is better than non-financial release. They're ridiculous on their face, but we still had to pick them apart and explain why they're not legitimate studies. Another argument they tried was that somehow money bail is good for poor people of color.

They even brought in the Southern Christian Leadership Conference to testify against improvements that would result in poor people of color who were not a danger to society being released without money bond. It was an astounding, outrageous argument that we were unprepared for, but that we eventually

successfully countered because of the strength of our coalition partners.

All our coalition members are public and on record. They're on our website. They're at hearings. They've submitted testimony. The bail industry actually called people up and tried to turn them against pretrial justice by saying, "Oh, no, we care about your poor congregants who are in jail and their families" and things like that. It was unsuccessful but it was very, very intense.

MANY PEOPLE ARE LOOKING TO NEW JERSEY, WHICH WENT LIVE WITH THE IMPROVEMENTS IN JANUARY, AS A MODEL. WHAT ADVICE DO YOU HAVE FOR THEM?

When you're trying to promote pretrial justice, it's not just about you getting up there and giving your opinion. It's not just you getting up there and citing statistics. It's about having a two-way conversation and understanding what the public or your other audience is thinking and hearing when you say something, and being able to talk to that. So it's really about knowing how to talk to them in a way they understand and that matters to them. Most people care about what matters to them, and so we were able to make that connection, whether it was public safety or justice or financial arguments.

Also, give the changes time to work. I think the main reason it has gone as smoothly as it has in New Jersey is because we have used the full two years between passage and implementation to get ready. It has been a matter of training judges and public defenders and prosecutors and all the systems people, hiring pretrial services unit staff, validating the risk assessment, and letting people get used to using it. At the same time, New Jersey was implementing an E-court system so everything would be electronic, including the fingerprint scan that goes with the risk

assessment. There was a lot to do. I have nothing but praise for the AOC, the Office of the Attorney General and the Office of the Public Defender and the job they did preparing everybody, because there have been very few glitches.

Having a coalition ahead of time is a key piece. You can't put a coalition together in a month. We were successful because we had worked with a lot of these folks before and were able to get people on board for this particular issue. We put months and months and months of work into building the coalition before it ever needed to show up in the state house. So that level of preparation is important.

And be prepared to work 24/7—because we did. I mean it was the most intense campaign we've ever run. It was constantly up and down and there were many, many, many late night and weekend conversations about final tweaks to the bill and fighting back against the bail bonding industry.

Be prepared and do not underestimate the bail industry. They are an intense group.

There's something very different about the fact that they are a multi-billion-dollar industry and have the money they do. And it isn't just the folks in New Jersey. Their national folks come in, as they

do in all the other states, and they're connected. They have money to spend on lobbying firms and misinformation.

I've done this work long enough to have seen people spin things. You know, people will present some unsupportable studies or research. But we never saw anything like the outright lies—I mean, you have to call them lies—that were made.

They were banking on scare tactics and their money winning the day, and so they felt no need to substantiate any statements or claims they made to legislators or the public.

At the end of the day we overcame their opposition but they should not be underestimated.

It's a constant fight. We are not chilling here, that's for sure. We and our coalition partners continue on a daily basis to let people know that the new pretrial system is working and it's better for public safety and it's better for justice and people's civil rights.

To learn more about the Drug Policy Alliance's pretrial work in New Jersey, visit www.drugpolicy.org/newjersey.

Roseanne's Advice:

- ✓ Listen to the concerns of the public and stakeholders
- ✓ Build a strong coalition early in the process
- ✓ Be prepared to work hard
- ✓ Do not underestimate the influence or tactics of the for-profit bail bond industry
- ✓ The work doesn't end when laws are passed—plan for implementation and training
- ✓ Give changes to the system time to work

3DaysCount™ is a national campaign to apply commonsense solutions to longstanding pretrial challenges that discriminate against the poor, undermine individual and community safety, and squander public resources. Working with up to 20 participating states and territories, by 2020 3DaysCount™ will set a new national standard of pretrial justice by reducing unnecessary arrests, replacing cash bail with risk-based release decisions, and restricting detention to those who are genuinely dangerous. For more information, visit www.pretrial.org/3DaysCount.